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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1108

LUTHER ROBINSON MADDOX,
Petitioner,

v.

BERTHA E. SMITH and MARY LOIS MCNEIL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, WITH APPENDIX

LUTHER ROBINSON MADDOX, PRO SE,
1133 Woodward Building
Washington, D. C. 20005
(Phones; 347-2323; CO. 5-4111)

DATED: FEBRUARY 5, 1968.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. ——

LUTHER ROBINSON MADDOX,
Petitioner,

v.

BERTHA E. SMITH and MARY LOIS MCNEIL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, WITH APPENDIX

Petitioner, Luther Robinson Maddox, Pro Se, prays that a writ of certiorari issue from this Court to review judgments of the United States Court of Appeals for the District of Columbia Circuit, also in case No. 20794, both cases heard together but not consolidated, entered in the above entitled cause on October 2, 1967, affirming the judgments of the trial court, without an opinion (Per Curiam), and directing that each party bear their own costs on appeal (R. IV). A Motion for a Rehearing en banc was duly filed by Petitioner on October 16, 1967, and it was denied on November 15, 1967 (Per Curiam) (R. V(a)), on which date the Judgments of the Court of Appeals became final.

OPINIONS BELOW

The Judgments of the Court of Appeals were entered without an opinion, thus not reported. The pertinent and material parts of opinions of the trial court is shown in R. II, J.A. 30(a)-31(a), and full text in O/R.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S. Code, Section 1254(1) and pursuant to Rule 19 of this Court where (1) the court below has decided a case in conflict with decisions and principles of law laid down by this Court and other Circuit Courts, even in its own circuit; (2) and where it has decided important questions of law involving not only the Federal Rules of Civil Procedure but statutory law of general, special and great importance for every future litigant with similar questions in the District of Columbia, which statutory law (12-103) that has never been passed upon by this highest appellate court, and which should be settled by this court; and (3) where it has departed so far from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the trial court as to call for the exercise of this Court's power of supervision; (4) and, further, where it has decided federal questions and issues in conflict with applicable decisions of this Court and well-established law.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court below err when it affirmed the trial court's order and judgment of October 4, 1966, without an opinion, overlooking or ignoring the plain provisions of the District of Columbia Code (12-103) that plainly says and/or intends to say that the substituted parties defendant (Smith and McNeil) are charged with, and liable for, all assets and properties that came to their

hands or descended to them as the result of Fred Smith's death (the original defendant herein), and not only what could be executed on just prior to his death?

II. Did the trial court err, and also the court of appeals when it affirmed the trial court's order and judgment of October 4, 1966, without an opinion, thereby approving the trial court's denial of your petitioner's motion on October 31, 1966 [R. II, J.A. 22(a)-28(a)], when said trial court refused to hear and allow this petitioner to be heard and have his day in court on the issue and question of what the substituted parties (the respondents herein) were burdened with as the result of Fred Smith's death?

III. Did the Congress of the United States mean to include wives who are self-supporting as the respondent Bertha E. Smith, receiving the same salary and emoluments, as a supervisor at St. Elizabeth Hospital ($244.00 a month), as her husband, and owning property of a value of about $40,000 in her own name, in addition to being joint owner in their home place (Lot 800, Square 5972) at 3310 5th Street, S.E., Washington, D.C., when that Code (Sections 35-716 and 35-718) was provided by Congress for the District of Columbia—many years before our Federal Rules of Civil Procedure were adopted?

IV. Did not the court of appeals err when it affirmed the lower courts order and judgment, in both cases (without an opinion, Nos. 20794 and 20786) when it ruled that your petitioner should bear his own costs on appeal, and refused to dismiss respondents' appeal in No. 20794, when that case was not docketed and perfected in time (not until February 24, 1967)?

STATUTES, FEDERAL RULES, ETC.

District of Columbia Code, Section 12-103: (effective Dec. 1963)

> "In all cases where a new party is made to an action *the costs which accrued before the new party is made to the action shall be taxed as part of the costs in the action, and the judgment rendered shall be the same as if the action had been originally commenced between persons who are made parties to the action.*" (However), "A defendant who is made a new party to the action may not be burdened with debts, damages, or costs beyond the amount of *property or assets that have descended or come to his hands from the deceased.*"

Federal Rules of Civil Procedure: Rule 73 (g), 75, 76

* * *

> Rule 73(g), FRCP, provides for filing and docketing cases (as in this case): "Where more than one appeal is taken from the same judgment to the same court of appeals, the District Court may prescribe the time for filing and docketing" * * * (and that is constitutional, statutory and mandatory—see record; see record in No. 20794 (R. I, page 2 of answer to motion to dismiss appeal, where an incorrect statement has been made "time to docket appeal was extended to February 24, 1967," which is contrary to the order of Judge McGuire of ~~February~~ January 9, 1967 (O/R and 22-A). 22-A

District of Columbia Code, 1929 Ed. (on jurisdiction) p. 163, title 18:

> District Court "91, Jurisdiction.—The District Court shall have and exercise the same powers and jurisdiction as other courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress and of all proceedings instituted in exercise of the right of ominent domain."

STATEMENT OF THE CASE

This is a long-drawn-out case, where a judgment was obtained in 1930, by one Michael, against one Fred Smith, based on a conspiracy to defraud him out of certain stock the said Michael held. Harry Chester Smith, his brother, was also charged and made a defendant therein, but he could never be served (R. II, J.A. 1a, A), as he left this jurisdiction. That judgment obtained by Michael was revived and renewed in 1942, 1955, and again in 1966 (October 4, 1966), certain portions of which judgment and order this petitioner appealed from, to the court below, so far as liability of the substituted parties defendant were concerned (R. II, J.A. 29a, 20a, 21a). In 1963 Fred Smith died (R., 3a); prior thereto Michael died and this petitioner was substituted in his place as plaintiff on November 1, 1955 (R. II, 2(a)) therein.

In that order and judgment of November 4, 1966 of the trial court, supra, that court signed an order presented by the respondents' attorney Lane (at that time) wherein was added and inserted, after extending and reviving the judgment for another twelve years (R. II, J.A. 20a, 21a, 32a, 33a), that the substituted defendants (Smith and McNeil, respondents herein), instead of the one (order and judgment) presented by this petitioner (R. J.A. 32a, 33a),

> "but that the said parties Bertha E. Smith and Mary Lois McNeil *shall be held* liable on the judgment only to the extent of that property, if any, which was owned by Fred Smith and upon which execution could have issued just prior to his death and which passed to Bertha E. Smith and Mary Lois McNeil by reason of his death" (R. II, J.A. 21a).

This was the portion of the order and judgment appealed from by this petitioner; so, it went to the court of appeals below, was heard and decided, *without an opinion*, per curiam, on October 2, 1967, affirming the lower court's

order and judgment (R. V, V(a), IV and III in No. 20794). Hence it is not known on what grounds or for what reason that court based its order affirming the trial court's order and judgment.

This petitioner duly filed a motion for a reconsideration and a rehearing, etc. (R. II, J.A. 22a) in the trial court and it was denied summarily on October 31, 1966, although duly and properly filed, as the record shows. The respondents appealed also (No. 20794) from the trial courts order and judgment but did not say what part or portion from which they appealed (as the Rule, FRCP, requires), yet part of the order and judgment was in favor of the respondents and part of it was against them, so it was argued on that basis, both cases together, in the court of appeals (see R. II, J.A. 29a). Their appeal *was not perfected and docketed* until February 24, 1967, yet their extension of time for filing record was extended only through February 23 *(for filing record only)*. That point was challenged in the court of appeals by this petitioner as being beyond the jurisdiction of the Court of Appeals for that reason, and the motion to dismiss was denied (see R. V, in No. 20794, I (1), (2), (3) and A), although the burden was on the respondents to show that the court had jurisdiction when challenged and that burden rested on them to show it, *which was not done. Fayette* v. *Volkswagen of America, Inc.*, 273 F. Supp. 323, 285 F. 2d, at p. 186, *Taylor* v. *Portland Paramount Corp.*, 383 F. 2d 634, *Rowe* v. *Peyton*, 383 F. 2d 709.

REASONS FOR GRANTING WRIT

I. The court of appeals below has decided this case in conflict with decisions of other courts of appeals and in conflict with decisions of this court; and have decided a special and important question by implication, at least, contrary to a statutory law of Congress for the District of Columbia (12-103), a federal jurisdiction.

II. And/or have decided a federal question or questions in a way in conflict with applicable decisions of this court, or so far sanctioned such a departure by a lower court, as to call for the exercise of this court's power of supervision.

A.

The District of Columbia is a federal jurisdiction and title and section of 12-103 is a Federal Statute that has never been interpreted or construed by this highest of appellate courts. This case is *one of first impression on that issue.* The court of appeals, below, has said, at least by implication, when it affirmed the trial court's order and judgment contrary to that statute, supra, in this case, that its decision was correct, when it signed that order and judgment inserting the following:

> * * * "shall be held liable on the judgment only to the extent of that property, if any, which was owned by Fred Smith and upon *which execution could have issued just prior to his death* and which passed to Bertha E. Smith and Mary Lois McNeil by reason of his death" (J.A. 21a, R. II).

That holding is plainly and obviously contrary to the statutory law itself. See *U. S.* v. *Kirby*, 7 Wall. (U.S.) 482, and *Albrecht* v. *The Herald Co., d/b/a Globe Desmond, etc.*, 367 F. 2d 517, where it was held that all laws should receive a sensible construction. See also *Petteys and Reavis* v. *Butler* and *Maratime Air Lines, Inc.* v. *Blair and New Orleans*, 367 F. 2d 529, where it was said: "When reason of law ceases, law itself ceases to operate". In *U. S.* v. *Rands* (1967), 88 S. Ct. 265, this court granted a writ where there was *seemingly a conflict* between decisions of the court of appeals and this court. Cf. *Eastern Air Lines, Inc.* v. *Flight Engineers* (C.A. Fla), 340 F. 2d 104, 106.

In the *Albrecht Case* (1966), supra, at p. 525, quoting the Supreme Court, it was said: "Nothing is better set-

tled than that statutes should receive a sensible construction, such as will effectuate the legislative intention" (of Congress), and, if possible, so as *to avoid an unjust or an absurd conclusion.*

In the *Petey case*, supra, at p. 525, that court said: "Since the purposes of the act are stated clearly and appear side-by-side with the literal demands, we do not believe we have been precluded by Congress from passing an equitable and historic role by examining the facts of each case in the light of the stated goals to determine on *an ad hoc bases* whether the purposes of the act are in any way being served by an application of the later provisions * * * This we believe to be the correct law and it will be applied to the facts of this case."

In the case of *In Re Elmore,* 382 F. 2d 125 (D.C. 1965) it was held: "Reviewing court has power not only to correct errors in judgment under review *but to make such disposition of case as justice requires.* Exceptional cases or particular circumstances may prompt reviewing or appellate court, where injustice may otherwise result, to consider questions of law which were neither pressed nor passed upon by court or administrative agency below.

In *Bartlett-Collins Co.* v. *Nurinam Nav. Co.,* 381 F. 2d 546, it was held: On occasions, a theory raising question of law not in issue before trial court will be considered on appeal in order to prevent manifest injustice.

In *American Security Co. of N.Y.* v. *Coblentz,* 381 F. 2d 185, it was said: "The general rule is that reviewing courts will not consider issues raised for first time on appeal, but exception is made on occasion to this rule when the issue tardily presented raises *a pure question of law* and where a refusal to consider it would result in a miscarriage of justice."

In *Banco Nancional de Cuba* v. *Farr,* 383 F. 2d 135, it was held: A case must be decided according to the law as it exists at the time of final judgment.

And, in *General Electric Co.* v. *Southern Construction Co.*, 383 F. 2d 135, it was held: Court must give effect to plain and obvious meaning of statute without reading in or reading out (C.A. 5).

In *Brooklyn Savings Bank* v. *O'Neil*, 65 S. Ct. 895, 324 U.S. 697, 80 L. Ed. 2005, it was said: "The Supreme Court would grant a writ of certiorari to review a decision involving a federal statute of substance not theretofore determined by the Supreme Court."

In *Rowe* v. *Peyton*, 383 F. 2d 709, it was held: That Court of Appeals must follow U. S. Supreme Court's opinions.

In *Clemons* v. *Board of Education of Hillsboro*, 228 F. 2d 853, at 857, that court said: "It follows that the judgment of the District Court is contrary to the rules of equity and constitutes an improvident exercise of judicial power. It is generally held that trial court abuses its discretion when it fails or refuses properly to apply the law to conceded or undisputed facts."

And, in *Union Tool Co.* v. *Wilson*, 259 U.S. 107, 112, 42 S. Ct. 427, 66 L. Ed. 848: It was said "Misapplication of the law to facts is in itself an abuse of discretion."

B.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

There is involved here a Federal Rule of Civil Procedure: There is also involved here the construction of a ruling on statutory law for the District of Columbia (effective in Dec. 1963) that has never been passed upon by this Court as to what the English thereof and therein, plainly stated, means (12-103, supra), if it does not mean what it says.

In *Schlagenhauf* v. *Holder* (1964), 85 S. Ct. 234, 379 U.S. 104, 39 L. Ed. 152, this court granted a writ to review it concerning validity and construction of Rule 35 (FRCP).

In the *Brooklyn Savings Bank Case*, supra, this Court granted certiorari to review a decision involving a similar case. This case here, before this highest appellate court, involves a statutory law for the District of Columbia, which is a federal jurisdiction (not a state) and, therefore, the construction of its statute *involves a federal question.* The construction of this statute by the highest appellate court is necessary and proper because it not only basically affects materially this petitioner, but every other litigant who may be involved in a similar question or questions in this district. Then, moreover, there is a serious question involved here where the lower court assumed jurisdiction of the case for cross appellants (Smith and McNeil) when on the face of the record itself it had no jurisdiction, *as the case was docketed too late and not perfected in time*: the record was filed in the court of appeals by this petitioner on February 23, 1967, and his appeal perfected on that date; *but the respondents herein did not docket their case (No. 20794) until February 24, 1967*, so it is most highly important and necessary to have this Court say whether or not Rule 73, 75 and 76, FRCP, means a case must be docketed and perfected, before the time expires for perfecting the appeal.

In *Bledsoe and Emmitt Marcum d/b/a Oklahoma Auction Yard* v. *Wirtz, Sec'y of Labor* (C.A. 10), 384 F. 2d 767, it was held: The question of whether the court has jurisdiction over the subject matter of a cause of action has primary importance and can be raised at any time even on the court's own motion. (See *McGrath* v. *Kristensen*, 340 U.S. 162 cited therein.)

Here, in this case (20794) the District Court extended the time for filing the record to February 24, 1967, but

said nothing about docketing the case and perfecting it on appeal. It is most strongly argued and submitted that this oversight obviously under the rule gave the court of appeal no jurisdiction over the case on February 24, 1967, and that court should have taken notice of that fact, particularly so, when challenged by this petitioner (R. and A). Hence, a gross error on its part; and contrary to other appellate courts' decisions.

Cf. *Whitehead* case, 285 F. 2d 282, 109 U.S. App. D.C. 212 (in No. 20794, motion to reconsider order of June 9, 1967, denying dismissal etc., R. I(3)): These respondents did not even specify what part of the trial court's judgment of October 4, 1966, from which they appealed. The *Whitehead* case seemed to show it was most highly important, to docket and perfect one's appeal on time.

In *Taylor* v. *Partlow Paramount Corp.*, 383 F. 2d 634, it was held: Party asserting jurisdiction has burden of establishing it if his allegations are challenged in any appropriate manner.

That was not done by these respondents; the only attempt they made to do that was to state that to *docket case* time was extended to February 24, 1967, which was an erroneous statement. This court, therefore should do justice and review this case which the record shows is full of errors in rulings that are contrary to well established law.

In the *Schlagenhauf* case, supra, at p. 110, this court indicated that a writ of certiorari should issue when clear abuse of discretion by the trial court and the court of appeals has been shown. Only a glance at the record may be necessary for one to see that a gross abuse of discretion was made when the trial court signed that order of October 4, 1966, with the liability limited for the respondents as was done contrary to the statute itself (R., supra, Br. II, p. 15). The court below also undoubtedly overlooked or ignored that statutory law also (12-

103, supra) and committed a grave error too when it affirmed the lower court's judgment, with that provision in it, *instead of what the statutory law said.*

In *U. S.* v. *Rands*, 88 S. Ct. 265 (1967), a writ was granted, and accordingly issued, where *a seeming conflict* between the Supreme Court, Court of Appeals, and prior decisions of this court.

It is certainly of great and general importance to every District litigant, and others in the future, who may be involved in questions of this kind to have those questions passed upon by the highest appellate court, because mainly the Federal Rules are constitutional, statutory and mandatory to the effect *that a case must be docketed in time.* The record shows that; see new Federal Rule to become effective July 1, 1968, which emphasizes that point and shows very clearly a case must be docketed in time:

> "Rule 12(c), FRAP, (effective July 1, 1968). Dismissal for failure of appellant to cause timely transmission or to docket appeal. If the appellant shall fail to cause timely transmission of the record or to pay the docket fee if a docket fee is required, any appellee may file a motion in the court of appeals to dismiss appeal." See also 12(a).

It should be noted especially that emphasis has been placed upon "timely transmission of the record or to docket appeal" and this matter is statutory, constitutional and mandatory, as the appellate courts have held. See also new Federal Rules, 38 and 39 as to costs etc., to become effective July 1, 1968, which has clarified to a great extent that situation.

The present rule 73(g) (FRCP), also covers docketing sufficiently, it is submitted (supra). *In the Elmore* case, supra, it was said: "Reviewing court has power not only to correct error in judgment under review but to make such disposition of case as justice requires. In determining what justice requires, reviewing court is bound to

consider any change, either in fact or in law, which has supervened since justice was entered. Change either in fact or in law supervening since judgment was entered may be accommodated by reviewing court's grant of appeal solely to enable remand for further consideration."

In *Young* v. *St. P. R. Co.*, 369 F. 2d 502 (Dec. 12, 1966) at p. 504, it was said: "It is essential for this court to stay within its limits of statutory jurisdiction and to refrain from deciding cases and questions which it has no authority to decide", *Brown* v. *Thompson*, 150 F. 2d 171, 173, *St. Luke's Hospital* v. *Melin*, 172 F. 2d 533. In the *Thompson* case the appeal was dismissed for lack of jurisdiction.

In *Armstrong* v. *Mango et Ux.*, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 62 (1965) this court said: "*A fundamental requirement of due process is the opportunity to be heard. Gramins* v. *Ordean*, 234 U.S. 385. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded the right to petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the *petitioner to the position he would have occupied had due process of law been accorded him* in the first place. His motion should have been granted."

That statement of this highest appellate court certainly should apply to the trial court when trial court denied petitioner's motion on October 31, 1966, and refused to permit him to have his day in court and to be heard on that point and issue of liability extended to the respondents herein. This petitioner was denied then and there due process of law. (R. II, 22a), for he was not permitted to be heard on that point and issue. The trial court's action was arbitrary, capricious and a gross abuse of discretion, the court of appeals overlooked or ignored it also.

In *Covey* v. *Somers*, 351 U.S. 141, 100 L. Ed. 1021, this court held: The elementary requirements of due process assumes reasonable notice calculated to apprise interested party of pendency of action and afford such party an opportunity to be heard and present objections. (See *Pennoyer* v. *Neff*, 95 U.S. 714 and *Hovey* v. *Elliott*, 167 U.S. 418). In *Slachower* v. *Board of Education of New York*, 350 U.S. 551, 100 L. Ed. 692, it was held: *The protection of the individual from arbitrary action is the very essence of due process of law.* And in *Smith* v. *Texas*, 233 U.S. 630, this court said: "Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any of these separate and individual rights may lessen or extinguish the value of the other three." And in *Clemmons* v. *Board of Education of Hillsboro*, 228 F. 2d 853, at p. 857, that court said: "It is generally held that the trial court abuses its discretion when it fails or refuses properly to apply the law to conceded facts or undisputed facts." And, in *Union Tool Co.* v. *Wilson*, 259 U.S. 107, 112, 42 S. Ct. 427, 66 L. Ed. 848, it was said: Misapplication of the law to the facts is itself an abuse of discretion" * * * "such abuse of discretion requires reversal."

Both the trial court and the court of appeals, the record and law show, most clearly, were arbitrary, capricious, and discriminatory when it acted as it did on the portions of that order and judgment of October 4, 1966, this petitioner appealed from: "but that the said parties, Bertha E. Smith and Mary Lois McNeil, shall be liable on the judgment only to the extent of that property, if any, which was owned by Fred Smith and upon which execution could have issued just prior to his death and which passed to Bertha E. Smith and Mary Lois McNeil by reason of his death." (R. II, 20a, 21a)

CONCLUSION

For the foregoing reasons and authorities cited, applicable to the facts of record before this court, in cases below Nos. 20786 and 20794 (a cross appeal) a writ of certiorari to the Court of Appeals for the District of Columbia Circuit should be granted, to review its judgments in this case and do justice to this petitioner.

Respectfully submitted:

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(Phones; 347-2323; CO. 5-4111)

DATED: FEBRUARY 5, 1968.

Note: Emphasis added

O/R—Original Record in Trial Court;
R—Record in Court of Appeals;
(Both cases, Nos. 20786 and 20794 (Cross Appeal)).

APPENDIX

* * * *

No. 20786—Maddox v. Smith, et al. October 2, 1967

Dear Sirs:

I am enclosing herewith a copy of the judgment entered today *without an opinion* in the above entitled case.

Very truly yours,

NATHAN J. PAULSON
Clerk

(Copies to attorneys designated)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1967. Law No. 74531

No. 20786

LUTHER ROBINSON MADDOX,
Appellant,

v.

BERTHA E. SMITH and MARY LOIS MCNEIL,
Appellees.

[Stamped]
United States Court of Appeals for the District of Columbia Circuit, Filed Oct. 2, 1967,
Nathan J. Paulson, Clerk.

Appeal from the United States District Court for the District of Columbia.

Before: Burger, Wright and McGowan, Circuit Judges.

JUDGMENT (R. IV)

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel.

On consideration thereof it is ordered and adjudged by this Court that the judgment—of the District Court appealed from in this cause be, and it is hereby affirmed.

It is further ordered by this Court that each party bear their own costs on this appeal.

Per Curiam.*

Dated: Oct. 2, 1967

*(In Case No. 20794, duplicate "judgment" (Smith et al. v. Maddox)

(Same filing date, etc., and same kind of letter from clerk)

Petition for a rehearing, reconsideration, etc., filed October 16, 1967 and denied on November 15, 1967 (R. V(a)), as follows:

* * * *

September Term, 1967 Law No. 74531

No. 20786

LUTHER ROBINSON MADDOX,
Appellant,

v.

BERTHA E. SMITH and MARY LOIS MCNEIL,
Appellees.

[Stamped]

United States Court of Appeals for the District of Columbia Circuit, Filed Nov. 15, 1967, Nathan J. Paulson, Clerk.

Before: Bazelon, Chief Judge; Danaher, Burger, Wright, McGowan, Tamm, Leventhal, and Robinson, Circuit Judges, in Chambers.

ORDER [R. V(a)]

On consideration of appellant's pro se petition for rehearing, reconsideration and oral hearing, *en banc*, it is

ORDERED by the Court *en banc* that appellant's aforesaid petition is denied.

Per Curiam.

* * * *

(Motion to reconsider etc. denied on the margin of motion, see original in file, "Denied, Holtzoff, J., 10/31/66")

Motion to reconsider, vacate, set aside, hold for naught, so much of the orders and judgments of October 4, 1966, granting a revival and renewal of judgment revived and renewed by Judge Tamm on February 23, 1955, as covers liability of these substituted defendants. [O/R, R. II, J.A. 22a-27a.]

(Filed October 11, 1966)

Plaintiff, Pro Se, moves the Court to reconsider, vacate, set aside, and hold for naught, so much of the court's order and judgment of October 4, 1966, limiting the liability of Bertha E. Smith and Mary Lois McNeil, substitute defendants for the original defendant (Fred Smith), to-wit, all remaining parts of order after "the place of Fred Smith" (third line, last paragraph), begining with "but that the said parties, Bertha E. Smith" etc. (2) and/or make finding of facts and conclusions of

law, for the record, covering such order and judgment on liability of substituted defendants herein; and (3) direct the Clerk of this Court to file for record herein the order plaintiff presented to the Court for signature on September 30 that it refused to sign, also defendants' objection thereto with their points and authorities presented to the court in plaintiff's absence; and further (4) to direct the Clerk of this court to change records in this case to conform accordingly. And as grounds therefor, plaintiff says there is nothing in the Rules of Federal Procedure (25, or elsewhere therein) or the codes to limit liability as has been done in this order to support such a ruling, neither substantive nor procedural law to support, so far as plaintiff has been able to find.

It is contended and submitted that the defendants are simply placed in the shoes of the deceased Fred Smith and encumbered with all of his liabilities at the date of his death, accordingly. The case they cited (Attorneys for Defendants) to support their order presented does not, and did not, apply to this matter before the court, for that Water's case was a will case, and no will is involved here so far as plaintiff knows, in the case before this court. If this case must go to the court of appeals again, it is, and would be, only justice to force the substitute defendants to be made pioneers and take it there, as Fred Smith never paid any of the costs when it went there and was reversed before (221 F. 2d 59), nor any part of the original judgment (see Judge Tamm's order and judgment in file, of February 23, 1955, ordering judgment for costs, etc.). And further specific reasons and grounds, as shown in points and authorities annexed hereto, and made a part thereof.

/s/ LUTHER ROBINSON MADDOX, PRO SE

* * * * *

Dated: October 10, 1966.

Points and Authorities in support of the above motion to reconsider, etc., order and judgment of October 4 (1966).

I.

In opposition to Plaintiff's order presented by him for signature, on the 30th day of ~~October~~ September, 1966, substitute defendants for Fred Smith (their attorneys) say Fred Smith died *without assets or virtually* no assets to pass to his heirs is absolutely an erroneous statement, for the transcript in file in this case, showing the examination of Bertha E. Smith in aid of execution of judgment against Fred Smith now deceased (p. 11), shows a deed from Bessie van Ward passing the title to the home property at 3310 - 5th Street, S.E., Washington, D.C., to Fred Smith, Bertha E. Smith and Mary Lois McNeil, wherein Smith held a tenancy in common thereafter. This property has been assessed recently for taxation purposes at $6,808.00, Plaintiff has been informed; hence it is of common knowledge that the market value is about $14,000 or $15,000, or more today, or at the date of his death, whereon there was a lien valid and existing, at the time of his death. The records also show that Fred Smith paid taxes thereon, and made all improvements and repairs (Tr. 27, 28). The property next door (3314 - 5th Street, S.E.) standing in the name of Bertha E. Smith and Mary Lois McNeil, at that time was assessed at $17,174, making it worth about $35,000 or more. Moreover, the records show Fred Smith held insurance of $750.00, which undoubtedly his wife Bertha or Lois McNeil, recovered at his death, or soon thereafter. He was a civil service worker at St. Elizabeth Hospital, it appears, of the government and undoubtedly the heirs have been drawing his retired pay, or portions thereof, since Fred Smith's death. His retired pay, the record herein shows, was $244.99 a month. *So it may easily and clearly be seen that statement was in error.* The first paragraph of defendants' statement is correct; in their second paragraph *it is incorrect*, and not worthy of comment.

II.

Their third paragraph say *Waters* v. *Taylor clearly and explicitly* set out the substitute defendants liability on the judgment. In all of these statements made here, except the quotation, which did not go far enough, are misleading, for that Water's case was a will case and has no application to this situation before the court. Following their quotation, there may be seen the following: "*That proceeding is warranted against devisees only in case* they have actually succeeded to real estate devised to them, and *does not lie in the event that testator dies leaving no property.* In other words, *the liability of devisees for judgment debts of a testator attaches solely because lands have come to them under his will, and if the devise fails, either because the testator died leaving* no real property or for any other reason, the devisees named in a will are not chargeable with the debts of the testator." (emphasis added)

So, it may be seen that case has no application here and is misleading to say the least. Moreover, that case was decided in 1933, and therefore has no application or bearing whatsoever, for the Rules of Civil Procedure have superseded in a great measure many of those old cases and our District of Columbia Code has been changed very recently, so far as liability may be concerned.

III.

In their last paragraph of their points and authorities, they refer to rights reserved to appeal and seek review, it should be noted. It should be observed also that the Court's order refers all the way through, as does the papers for the defendants, on judgment—singular, if you please. Plaintiff's motion for renewal and revival was for a revival of "judgments" against Fred Smith—plural. See Judge Tamm's order of February 23, 1955. There were several judgments against Fred Smith. See the following: * * *

(See Joint Appendix in file, pp. 22a-27a, 17a-19a). See also pp. 30a, 31a, wherein is shown the material and pertinent portions of opinion of Judge Holtzoff, motion heard on September 28, 1966 (see O/R).

ORDER

(Granting Extension of Time for Filing Record in Case No. 20794)

(Filed January 9, 1967)

Upon consideration of this order, it is this 9th day of January, 1967,

ORDERED that the time for filing the record on appeal by defendants, Bertha E. Smith and Mary Lois McNeil shall be extended to February 24, 1967.

/s/ MATTHEW F. MCGUIRE
Judge,
United States District Court
for the District of Columbia

(Copy letter of Clerk here, dated February 23, 1967, which was ordered by Court to be filed in Case No. 20794): (R. IV) * * * order dated Dec. 18, 1967

* * * *

Joshua H. Lane, Esq.
600 Hill Building
Washington, D. C. 20006

No. 20786—Maddox
v. Smith et al.

Dear Sir:

In the above entitled case the original record on appeal was filed in this court on February 23, 1967, and the above-entitled appeal was docketed on that date.

The appeal by Bertha E. Smith and Mary Lois McNeil *will not be docketed until the $25.00 docket fee is paid.* See Rule 13(b) and Rule 20(h) of this court. An appearance should be filed at the time of docketing. See Rule 13(e).

Very truly yours,

NATHAN J. PAULSON
Clerk

By: ELIZABETH E. NAMETH
Deputy Clerk

No. 20794

MOTION TO DISMISS APPEAL IN 20794, OR/AND FOR OTHER RELIEF (FILED MAY 8, 1967)
R. I (1), (3)

* * * *

III.

Finally, their appeal was not perfected in time: (See docket and record). The extension of time was only to February 24, 1967, and did not include the 24th of February. The law is statutory, jurisdictional and mandatory on appeals, *and they must be perfected in time.* It is believed that this Court had no power or authority over case No. 20794 after midnight of February 23, 1967; it was extinguished at that moment and time, except to dismiss the appeal. (See *Mashak* v. *Hacker*, 297 F. 2d 495, at p. 496, *Howard* v. *Local 74 Wood and Metal Lathers International*, 208 F. 2d 930, at p. 932, *Young* v. *St. Paul R. Co.*, 369 F. 2d 502, Dec. '66), holding time requirement within which appeal must be taken is mandatory and jurisdictional.

Wherefore Plaintiff Maddox (* * *) for convenience respectfully prays that this motion be granted and that

the appeal in No. 20794 be dismissed as frivolous, because the appeal was not perfected until after February 23, 1967, and *that attempted appeal* after that time was a nullity on the face of the record, after that time. Respectfully submitted: * * *

OPPOSITION TO APPELLEES MOTION TO DISMISS AND CONSENT TO TREATING HIS BRIEF AND APPENDIX IN NO. 20786 AS SUFFICIENT FOR THIS APPEAL. R. I(1)

* * * *

3. With respect to Appellee's contention that this appeal was not perfected in time, Appellant's Notice of Appeal was filed on December 13, 1966, the date for *docketing the record on appeal was extended to February 24, 1967*, by order of the District Court, which order is contained in the original record now on file in this Court of Appeals. Appellee's contention that the record was not docketed in time is without foundation.

/s/ * * *
Attorneys for Appellants

(See order of Judge McGuire, supra, it says nothing about docketing). 22-A

(Filed on June 9, 1967, order denying motion to dismiss appeal in No. 20794).

Rule 73(g) FRCP, docketing and record on appeal: "The record on appeal as provided for in Rules 75 and 76 shall be filed with the appellate court and the *appeal there docketed within 40 days from the date of filing* the first Notice of Appeal; except that, when more than one appeal is taken from the same judgment to the same appellate court, *the District Court may prescribe the time for filing and docketing* * * *

See Record in Case No. 20794, R. I(2), motion of this petitioner and respondents' statement in opposition saying just the opposite of order of Judge McGuire * * *

In *Bledsoe* and *Emmitt Marcum* and *d/b/a Oklahoma Auction Yard* v. *Wirtz, Sec'y of Labor* (C.A. 10) 384 F. 2d 767 held:

The question of whether the court has jurisdiction over the subject matter of a cause of action has primary importance and can be raised at any time even on the court's own motion. (See *McGrath* v. *Christenson*, 340 U.S. 162, cited therein).

(See Rule 12(a) and 12(c), FRAP, to become effective July 1, 1968) "(a) Docketing the Appeal within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the Court of Appeals the docket fee fixed by the Judicial Conference of the United States pursuant to 28 U.S.C., Sec. 1913, and the Clerk will thereupon enter the appeal upon the docket." * * * "The Court of Appeals may upon motion for cause shown enlarge the time for docketing the appeal or permit the appeal to be docketed out of time." * * *

No. 20794

* * * *

Filed June 9, 1967

Before: Bazelon, Chief Judge; Wilbur K. Miller, Senior Circuit Judge; and Danaher, Circuit Judge, in chambers.

ORDER

On consideration of appellee's motion to dismiss this appeal as frivolous or, alternately, to treat appellee's brief filed in Appeal Case No. 20786 (*Maddox* v. *Smith*

et al.) as his brief in this case and of appellants' opposition thereto, it is

ORDERED by the Court that appellee's aforesaid motion to dismiss be denied, and it is

FURTHER ORDERED by the Court that the brief filed by appellee in case No. 20786, wherein he is the appellant, shall be treated as his brief in this appeal.

Per Curiam. (R. V)

* * * *

No. 20794

(R. VII)

Filed July 27, 1967

Before: Bazelon, Chief Judge, in chambers.

ORDER

On consideration of appellee's motion to permit appellee to file a supplemental brief it is,

ORDERED that the aforesaid motion be granted and appellee within twenty days from the date of this order may file a supplemental brief in this case.

* * * *

No. 20794

(R. VI)

Filed July 3, 1967

Before: Bazelon, Chief Judge; Wilbur K. Miller, Senior Circuit Judge; and Danaher, Circuit Judge, in chambers.

ORDER

On consideration of appellee's motion to reconsider this court's order of June 9, 1967, and to reconsider his motion to dismiss, it is

ORDERED BY THE COURT that the order entered herein on June 9, 1967, is amended, and appellee's brief and joint appendix filed in case No. 20,786 shall be treated as his brief and the joint appendix in this case, and it is

FURTHER ORDERED by the Court that the Clerk shall set this case and case No. 20,786 for hearing before the same division of this court on the same day.

Per Curiam.

* * * *

No. 20786

Filed December 18, 1967

Before: Burger, Wright, McGowan, Circuit Judges, in chambers.

ORDER

On consideration of appellant's motion to stay the transmission of the certified copy of this Court's judgment pending application to the Supreme Court of the United States for the issuance of a writ of certiorari, it is

ORDERED by the Court that appellant's aforesaid motion is denied.

Per Curiam.

* * * *

No. 20786

Filed January 2, 1968

MOTION FOR AN ORDER TO RETURN CERTIFIED COPY OF JUDGMENT TO THIS COURT AND/OR FOR OTHER RELIEF IN THE PREMISES

(Denied 2/2/68 as to Return of C/C/J) *

Appellant, Pro Se, moves this Court for an order directing the return of the judgment in this case pending application to the United States Supreme Court for a writ of certiorari to review said judgment and to direct the Clerk of this Court to file the herewith attached Exhibit "A" (Motion for a Reconsideration to stay, etc., which speaks for itself), or for other relief in the premises. The reasons and grounds therefor are as follows:

> the Exhibit "A" herewith attached speaks for itself (original and three copies). It was presented to the Clerk of this Court and received on December 28, 1967, at 9:05 A.M., and at that time there was no entry made upon the docket in this case to show that the judgment herein had gone down to the lower court. On December 30, 1967, Appellant received back through the mail this motion for reconsideration, etc. (Exhibit "A") from the Clerk's office with a memorandum saying that the judgment had in this case been issued to the District Court and that the Motion, therefore, could no longer be filed (Exhibit "A" herewith). See File and Record in case.

/s/ LUTHER ROBINSON MADDOX, PRO SE

* * * *

No. 20786

Filed December 28, 1967

Exhibit "A" (Original and 3 Copies)

(Ordered Filed 2/2/68) (See Above)*

MOTION OF APPELLANT FOR A RECONSIDERATION OF ITS MOTION TO STAY TRANSMISSION OF THE CERTIFIED COPY OF THE JUDGMENT IN THE ABOVE-ENTITLED CASE PENDING APPLICATION TO THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW SAID JUDGMENT

Pursuant to Rule 27(e) of this Court, Appellant, Pro Se, moved this Court on November 18, 1967, to stay said judgment being sent down to the lower court, affirming said judgment below, without an opinion, directing costs to be borne by each party herein, pending application to the Supreme Court of the United States for a writ of certiorari to review the judgment herein. That motion was denied on December 18, 1967. The reasons and grounds therefor are as follows:

I

It is believed that this Court has overlooked the fact that the fundamental question that should be passed on by the Supreme Court, and since this is a case of first impression, to construe or interpret Section 12-103 of our District of Columbia Code (a federal jurisdiction, and not a state), it is only justice and fair treatment, based on the record before this Court, to stay the transmission of that judgment to the lower Court until that highest appellate court has passed on the questions involved herein.

II.

The Appellees' liability was fixed below by that Court contrary to established law, without having allowed this appellant to be heard on the important question involved under the new Statute (12-103).

Respectfully submitted,

/s/ LUTHER ROBINSON MADDOX, PRO SE

* * * *

September Term, 1967 Law No. 74,531

No. 20786

[Stamped]

United States Court of Appeals for the District of Columbia Circuit, Filed Feb. 2, 1968, Nathan J. Paulson, Clerk

Before: Burger, Wright and McGowan, Circuit Judges, in chambers.

ORDER

On consideration of appellant's motion for an order to return the certified copy of the judgment to this court pending application to the United States Supreme Court for writ of certiorari, and to direct the clerk to file the attached exhibit "A" entitled: Motion of Appellant for Reconsideration of its Motion to stay transmission of the judgment Pending Application for Writ of Certiorari, it is

ORDERED by the court that the clerk is directed to file the aforesaid exhibit "A" and it is

FURTHER ORDERED by the court that appellant's motion for an order to return the certified copy of the judgment pending application to the United States Supreme Court for writ of certiorari is denied.

Per Curiam.